

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Gregory M. Fehn)
Serial No: 08/917,044)
Filed: August 19, 1997)
For: CONTAINER WITH RECYCLED)
PLASTIC)

REQUEST FOR RECONSIDERATION
OF PETITION TO REVIVE
UNDER 37 C.F.R. 1.137(a)

RECEIVED

AUG 11 2000

OFFICE OF PETITIONS

The Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231
Sir:

Applicant hereby requests reconsideration of the **PETITION TO REVIVE UNDER 37 C.F.R. 1.137(a)** previously submitted on February 10, 2000. The **DECISION DISMISSING PETITION** bore a mailing date of June 7, 2000, and gave two months for filing a renewed petition.

Initially, Applicant expresses his appreciation to Special Projects Examiner B. Hearn for the courtesies extended to his undersigned attorney during a telephone interview held on August 7, 2000. No conclusions or agreements were reached during this interview. However, the interview thoroughly discussed the issues concerning Applicant's **PETITION TO REVIVE UNDER 37 C.F.R. 1.137(a)**. The substance of this discussion appears below.

The **DECISION DISMISSING PETITION** found only the following item missing from Applicant's **PETITION TO REVIVE UNDER 37 C.F.R. 1.137(a)**:

(3) a showing to the satisfaction of the Commissioner that the **entire** delay in filing the required replay from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; (Emphasis in original.)

The problem apparently preventing the allowance of Applicant's petition does not concern the adequacy of the entries in Applicant's attorney's docketing system. This attorney's firm has established not only a double docketing system, but each docket book carries *two* entries for each matter. The first entry (in regular pencil) notes that some action becomes due in one month. The second entry (this time in red pen) notes the actual last day for taking a particular action.

Rather, the outstanding issue concerns the actions taken upon the completion of a matter by Applicant's attorney and his partner. In particular, the **DECISION DISMISSING PETITION** enquires as to whether the attorney actually crosses off completed matters. The answer, as indicated in the attached **SECOND DECLARATION OF GAIL TULER FRIEDMAN** and in the certification below, states that the attorney and his law partner have not done so. Rather, they both have an awareness of the matters passing through their small office. They regularly review their docket books to see matters that are coming due. Both have an awareness of docketed matters that are due. Both typically know matters that have been completed. In the particular instance under discussion here, both had seen the papers to pay the issue fee and provide the formal drawings. Both had concluded, in late December, 1999, and early January, 2000, that the matter had been taken care of. This was based on the fact that, after preparing the papers, the mailing takes place by the date on the certificate of mailing if only to avoid the necessity of redoing the certificate. Both would have crossed the item off well before the due date of January 7, 2000, since they both thought that the fee and drawing had been duly forwarded. Thus, that the final fee was not paid was due to any deficiency in the attorney's docketing system. Rather, it resulted from the unfortunate conclusion that both the attorney and his partner had reached that the completed papers, which both had seen and handled, had been immediately filed rather than set aside for a short period of less than two days.

The undersigned attorney also states that the papers actually presented to him on October 25, 1999, by his partner were in suitable condition for signing. This would include not only the **ISSUE FEE TRANSMITTAL** (form PTOL-85B) and Applicant's communication **SUBMISSION OF ISSUE FEE**, but also the certificate of mailing (for two days later) on each. Applicant's attorney did not then sign the papers. He had no doubt that the papers were fully suitable for their intended purposes, since his partner had prepared many such filings. However, he believed that he should actually review the papers before signing them. Aside from this cau-

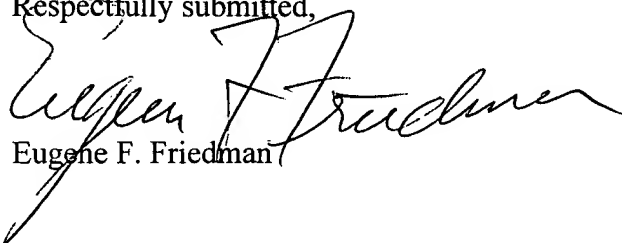
tion on the attorney's part, the papers would actually have borne signatures and certificates of mailing well before the due date. By the time of the due date, in fact shortly after first seeing the papers, he firmly believed that he had signed the papers and that they had been mailed. This belief as to his prior actions, and not any deficiency in the docketing system, resulted in the failure to timely mail the papers. This false but firm belief made the delay unavoidable.

Applicant's attorney and his partner have established a clearly satisfactory double docketing system to keep track of the due dates for items in the Patent and Trademark Office. The system has worked well to assure compliance with the due dates. As discussed above, the reason that the system works well is based on the smallness of their firm, which consists of two lawyers who, in fact, are also married to each other. This simply means that each has a reasonably complete awareness of matters due and the actions taken by the other. The failure to timely pay the issue fee in the present case was the misbelief that resulted from Mrs. Friedman having obtained the drawings, written the check for the issue fee, and prepared the appropriate papers. Communicating this to the undersigned by actually giving him the papers, in the very immediate future, caused both to conclude that the matter had been taken care of. Both would have marked the item as completed in the dockets had they had a practice of doing so because of this mistaken belief. The filing take did not place *only* because of this mistaken belief. This belief, *based on the actual preparation of the papers and fee*, made the unexpected and unforeseen failure of himself and his law partner unavoidable. Based on the above, Applicant's application should be revived pursuant to 37 C.F.R. 1.137(a). This action is sincerely requested.

The present request for reconsideration appears to have been timely filed in response to the **DECISION DISMISSING PETITION**. Accordingly, no extension fee appears necessary. However, should this prove incorrect, then any required extension fee not paid for by an enclosed check may be charged to Deposit Account 06-2135 of the undersigned attorney.

I certify that the matters stated above are true and correct to the best of my knowledge, information, and belief.

Respectfully submitted,


Eugene F. Friedman

Attorney for Applicant
Reg. No. 25,627

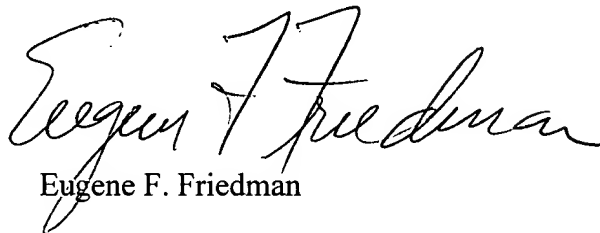
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Dated: August 7, 2000

CERTIFICATE OF MAILING

I certify that this correspondence is being deposited with the U. S. Postal Service in an envelope with sufficient postage as first class mail and addressed to:

The Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

on August 7, 2000.



Eugene F. Friedman